

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

**FILED**   
IN CLERK'S OFFICE  
U.S. DISTRICT COURT, E.D.N.Y.

★ MAY 25 2005 ★

BROOKLYN OFFICE

-----X  
EON SHEPHERD,

Petitioner,

-against-

SUPERINTENDENT,  
Elmira Correctional Facility,

Respondent.  
-----X

MEMORANDUM  
and  
ORDER

02 CV 3452  
related to  
99 CV 1866

Jack B. Weinstein, Senior United States District Judge

APPEARANCES:

For Petitioner:


Eon Shepherd, *pro se*.

For Respondent:

Daniel M. Donovan  
District Attorney, Richmond County  
130 Stuyvesant Place, 7<sup>th</sup> Floor  
Staten Island, NY 10301  
By Duncan T. Brown

By memorandum, order and judgment dated December 7, 2004, this court dismissed Eon Shepherd's petition for a writ of habeas corpus. 28 U.S.C. § 2254. By papers dated January 5, 2005 petitioner filed a notice of appeal docketed on January 10, 2005.

Apparently, attached to the notice of appeal was a motion "pursuant to Rule 60(B)(1)(4)(6) of the Federal Rules of Civil Procedure, granting vacature of the judgment and reentry to allow an appeal ... or reinstate the petition." The motion seems to have been placed in files of the Appeals Section of the Clerk's Office without being docketed and promptly



forwarded to the undersigned. By letter dated February 4, 2005, the Clerk of the Court received, but did not forward to the undersigned a letter inquiring why his Rule 60(b) motion was not ruled on, and asking for a copy of the transcript of the hearing of December 2, 2004.

The letter and motion was docketed on May 17, 2005 and only then forwarded to the undersigned.

The court has considered the Rule 60(b) motion. In essence it is a motion for reargument of the issues already decided in the memorandum, order and judgment of dismissal of December 7, 2004. *See also* the order denying the Rule 60 motion in a related case, 99-CV-1866.

The Rule 60 (b) motion in 02-CV-3452 is denied as without merit.

If the transcript of the hearing of December 2, 2004 has not been furnished to petitioner it shall be promptly sent to him and the cost charged to C.J.A. funds.

The court apologizes to petitioner for the delay in our Clerk's offices.

SO ORDERED.

s/Jack B. Weinstein  
Jack B. Weinstein  
Senior United States District Judge

Dated: Brooklyn, N.Y.  
May 19, 2005